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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1950

No. 453

RAY H. GARNER, ET AL., PETITIONERS,

vs.

BOARD OF PUBLIC WORKS OF THE CITY OF LOS ANGELES, ET AL.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

PETITION FOR CERTIORARI FILED DECEMBER 12, 1950.

CERTIORARI GRANTED MARCH 5, 1951.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

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ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

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[fol. a] APPEARANCES:

Charles J. Katz, Esq., Suite 1220 Garfield Building, 403 West Eighth Street, Los Angeles 14, California, Counsel for Appellants.

Ray L. Chesebro, City Attorney, Bourke Jones, Assistant City Attorney, 400 City Hall, Los Angeles 12, California, Counsel for Respondents.

[fol. 1] **Clerk's Transcript**

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

559954

RAY H. GARNER; HARRY BECKERMAN; AIDA BELDNER; JOHN R. BROWN; CARRIE L. DICK; MARY E. GRUNEWALD; EUGENE HALLETT; MARGARET B. HASKELL; EDWARD HAVENS; CORNELIUS LAWRENCE; VERA MANN; OLA ROSS PACIFICO; DANA PLATT; EUGENE REED; FRANCES SCHWARTZ; WILLARD SMART; FRANK TORREANO; Petitioners,

vs.

BOARD OF PUBLIC WORKS OF THE CITY OF LOS ANGELES; CLARENCE J. DERRICK, JOSEPH O. DONOVAN, LOUIS M. DREVES, FRANK GILLELEN, EDWARD L. TAYLOR, and MILTON OFFNER, as members of the Board of Public Works of the City of Los Angeles; BOARD OF CIVIL SERVICE COMMISSIONERS OF THE CITY OF LOS ANGELES; SAMSON A. LINDAUER, JUSTIN W. GILLETTE, CHARLES E. ARNN, RANSOM M. CALLICOTT, and MRS. IDA S. LAZARD, as members of the Board of Civil Service Commissioners of the City of Los Angeles; DAN O. HOYE, City Controller of the City of Los Angeles; THE CITY OF LOS ANGELES, a municipal corporation; Respondents.

CONSOLIDATED PETITIONS FOR WRIT OF MANDATE

Petitioners hereinabove named respectfully petition for a writ of mandate, and allege that:

[fol. 2] I

Petitioners are Citizens of the United States and of California; and at all times herein have been such citizens;

they are the parties beneficially interested; and the parties who will be affected by this petition are the petitioners and the respondents above named.

II

The respondents, Clarence J. Derrick, Joseph O. Donovan, Louis M. Dreves, Frank Gillelen, Edward L. Taylor, and Milton Offner, are members of the Board of Public Works of the City of Angeles; the respondents, Samson A. Lindauer, Justin W. Gillette, Charles E. Arnn, Ransom M. Callicott, and Mrs. Ida S. Lazard, are members of the Board of Civil Service Commissioners of the City of Los Angeles; the respondent, Dan O. Hoye, is the City Controller of the City of Los Angeles; the respondent, The City of Los Angeles, is a municipal corporation and a political subdivision of the State of California charged with government power, including the power to sue and be sued.

III

Petitioners were duly and regularly appointed to positions in the classified service of the City of Los Angeles in the positions of, rate of pay, and duration of service, as more specifically set forth below:

[fol. 3]

Name	Position held	Approx. monthly rate of pay	In the employ of the city since approx.
Ray H. Garner	Equipment Operator	$320.00	1936
Harry Beckerman	Photographer	250.00	March, 1947
Aida Beldner	Intermediate Clerk, Typist	236.00	March, 1943
John R. Brown	Maintenance Laborer	190.00	July, 1948
Carrie L. Dick	Intermediate Clerk	248.00	1947
Mary E. Grunewald	Librarian	259.00	1946
Eugene Hallett	Civil Engineering Associate	494.00	1936
Margaret B. Haskell	Clerk, Typist	190.00	1934
Edward Havens	Electrical Mechanic	373.00	1947
Cornelius Lawrence	Maintenance Laborer	250.00	1946
Vera Mann	Intermediate Clerk, Typist	200.00	1948
Ola Ross Pacifico	Public Health Nurse	283.00	1947
Dana Platt	Clerk	220.00	1944

[fol. 4]

Eugene Reed	Tree Trimmer	325.00	1938
Frances Schwartz	Public Health Nurse	273.00	1947
Willard Smart	Junior Mechanical Engineer, Grade B	469.00	1939
Frank Torreano	Maintenance Construction Helper	246.00	1936

IV

On or about October 21, 1948, the Council of the City of Los Angeles passed an Ordinance Number 94,004 which became effective December 6, 1948, a copy of which is hereto attached, marked Exhibit "1" and incorporated herein by reference; said Ordinance required employees of the City of Los Angeles to subscribe to an oath of loyalty, and to execute an affidavit of membership or non-membership in the Communist Party of the United States and the Communist Political Association. A Copy of said oath and affidavit are hereto annexed, marked Exhibit "2".

V

On or about December 29, 1948, each petitioner was notified either orally or in writing as set forth in the copies [fol. 5] of the written communications which are hereto attached, marked Exhibit "3" and incorporated herein by reference; the substance of said notifications was that:

1. Under the provisions of Ordinance Number 94,004 each employee of the City of Los Angeles who could truthfully do so, must take and sign an oath of loyalty to the United States; the Ordinance set forth the form of the oath and prescribed January 5, 1949, as the end of the filing period; within the same period each employee was to sign and file and affidavit stating whether or not he was or ever had been a member of the Communist Party of the United States or the Communist Political Association.

2. The respondents did not wish any employee to fail to sign the oath or the affidavit either because he had not been given an opportunity to do so or because of any ignorance or misunderstanding as to the requirements, purposes or application of the Ordinance.

3. The immediate supervisor of each petitioner employee reported that each petitioner was given an opportunity to sign the oath and affidavit, but that he had stated his refusal to do so. In order that the facts might be clear and without misunderstanding, each petitioner was requested to forward to the office of the respondents a writing stating fully his position in the matter and all of his reasons therefor. This communi- [fol. 6] cation was signed by the Personnel Director of the respective departments.

VI

On January 3, 1949, or thereabouts, in response to the above written communication from the respondent, Board of Public Works, the substance of which was set forth above, each petitioner who was in writing requested to do so, excepting Edward Havens, did set forth in copies of communications hereto annexed and marked Exhibit "4", his reasons for not signing the oath and affidavit in the form required under Ordinance 94,004.

VII

On January 6, 1949, the respondent, Board of Public Works of the City of Los Angeles and its members as set forth above, pursuant to Ordinance Number 94,004, ordered the discharge of petitioners effective January 7, 1949, from their respective positions, as indicated in paragraph III, and from the service of the City of Los Angeles, and thereafter caused to be served on the petitioners notices of discharge, photostatic copies of which are hereto attached and marked Exhibit "5" and made a part of this petition, which set forth the reasons for such discharge. With more particularity, the reasons given for the discharge of petitioners were:

Petitioners Harry Beckerman, Aida Beldner, Carrie L. Dick, Eugene Hallett, Vera Mann, Dana Platt, and Willard [fol. 7] Smart were discharged for:

Cause One: Each petitioner failed to take and subscribe to the oath set forth in Section 1 of Ordinance Number 94,004 passed by the Council of the City of Los Angeles on October 21, 1948, as required by the provisions of the said Ordinance.

Cause Two: Each petitioner failed to execute an affidavit stating whether or not he was or ever had been a member of the Communist Party of the United States of America or the Communist Political Association within the time required by the provisions of the said Ordinance.

Cause Three: Each petitioner refused to execute the said affidavit within the time provided by the said Ordinance, notwithstanding the fact that he was directed so to do.

Petitioners John R. Brown, Mary E. Grunewald, Margaret B. Haskell, Edward Havens, Cornelius Lawrence, Eugene Reed, Frances Schwartz, and Ray H. Garner were discharged for the reasons given below:

Cause One: Each petitioner failed to take and subscribe to the oath set forth in Section 1 of Ordinance Number 94,004 passed by the Council of the City of Los Angeles on October 21, 1948, as required by the provisions of the said Ordinance.

Cause Two: Each petitioner failed to execute an oath stating whether or not he was or ever had been a [fol. 8] member of the Communist Party of the United States of America or the Communist Political Association within the time required by the provisions of the said Ordinance.

The reasons given for the discharge of petitioners Ola Ross Pacifico and Frances Schwartz were:

Cause One: Each petitioner failed to execute an affidavit stating whether or not she was or ever had been a member of the Communist Party of the United States of America or the Communist Political Association, as required by the provisions of Section 4 of Ordinance Number 94,004 passed by the Council of the City of Los Angeles on October 21, 1948.

Cause Two: Each petitioner refused to execute the said affidavit within the time provided by the said ordinance, notwithstanding the fact that she was directed so to do.

VIII

On February 2, 1949, and within the time required therefor, the petitioners appealed to the Board of Civil Service Commissioners from the action taken by the Board of Public Works of the City of Los Angeles, and demanded in writing that the Board of Civil Service Commissioners investigate the ground for the discharge of said petitioners.

Thereafter, the Board of Civil Service Commissioners held hearings on February 10, 1949, and on February 18, 1949, inquiring into the discharge of the petitioners by

[fol. 9] virtue of the provisions of Ordinance Number 94,004, and thereafter and on March 1, 1949, said Board, pursuant to Ordinance Number 94,004, sustained the discharge of petitioners; a notification of such findings, supporting the discharge by the Board of Public Works, was duly served on petitioners; a copy of said notification served on the attorney for the petitioners is attached hereto, marked Exhibit "6", and incorporated herein by reference.

IX

On or about March 7, 1949, pursuant to Charter provision 112½ of the Charter of the City of Los Angeles, petitioners each filed separate claims for unpaid salaries with the City Clerk of the City of Los Angeles; copies of which are hereto annexed and marked Exhibit "7"; on March 7, 1949, petitioners each filed with the respondent, Board of Civil Service Commissioners, his application for reinstatement pursuant to Ch-rter Provision 112½ of the City Charter of the City of Los Angeles; copies of said applications are hereto annexed and marked Exhibit "8"; thereafter, and on or about March 15, 1949, both the request for unpaid salary and the application for reinstatement were denied by respondents pursuant to Ordinance Number 94,004.

X

Since the date of their discharges, petitioners have not been employed in their regular positions, or in any position, for the City of Los Angeles, but on the contrary have been [fol. 10] refused work and are not now permitted to work and are not now working for said respondent, City of Los Angeles, in any position.

That but for the matter of asserted failure to comply with the provisions of Ordinance Number 94,004, petitioners each performed the services required of him in a competent and satisfactory manner; and petitioners were at all times herein mentioned fit and suitable persons to fill the positions from which they were removed.

XI

The grounds for petitioners' discharges, as set forth by the respondent, Board of Public Works, do not comply with

Section 112 of the Charter of the City of Los Angeles, which provides that:

> "No person in the classified civil service of the City shall be removed, discharged or suspended except for cause";

that the acts of the respondents alleged in paragraphs VII, VIII and IX herein were without cause, were arbitrary, capricious and beyond their jurisdiction, and were in violation of Section 112 of the Charter of the City of Los Angeles in that petitioners' failure to conform to Ordinance Number 94,004 has no relation to their ability to perform duties required under their employment with the City of Los Angeles, and to their fitness and suitability to fill the positions from which they were removed.

[fol. 11]

XII

The acts of the respondents alleged in paragraphs VII, VIII and IX herein were without cause, were arbitrary, capricious and beyond their jurisdiction in that they were taken pursuant to and on account of Ordinance Number 94,004; and said Ordinance is unlawful, void and of no effect for the reasons that:

(a) It is contrary to Section 103 of the Charter of the City of Los Angeles in that it required petitioners as a condition for continued employment to submit to an inquiry into their political affiliations by asserting or denying whether each was or was not a member of the Communist Party of the United States, or of the Communist Political Association, both of which were at all times herein material, political organizations.

(b) It is contrary to Article XI, Section 8h of the Constitution of the State of California, in that it amends, or purports to amend, Section 103 and Section 432 of the Charter of the City of Los Angeles by an Ordinance passed by the City Council and approved and signed by the Mayor of the City of Los Angeles, and not in the manner set out in said Article XI, Section 8h.

(c) It denies to petitioners and deprives petitioners of liberties without due process of law, in violation of the First, Ninth, Tenth, and Fourteenth Amendments to the Constitution of the United States in that:

[fol. 12] (1) It required petitioners, as a condition of continued employment, to disclose their affiliations or lack of affiliations, with the Communist Party of the United States and the Communist Political Association which are and at all times herein material, political organizations.

(2) Said Ordinance and the requirement herein alleged interfered with, restrained, coerced and abridged petitioners in the exercise of their rights and duties of political expression through membership in and activities on behalf of the Communist Party, a political organization, including without limitation, speech, press, assembly, association and petition for redress of grievances.

(d) It denies to petitioners due process of law in violation of the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States in that it required petitioners to disclose their affiliation with or lack of affiliation with the Communist Party of the United States and the Communist Political Association, both of which were at all times herein material, political organizations, and thereby violated petitioners' right to privacy and to be silent in such matters.

(e) It denies to petitioners rights under the Constitution of the State of California in that:

[fol. 13] (1) It required petitioners as a condition of continued employment to disclose their affiliation or lack of affiliation with the Communist Party of the United States and the Communist Political Association, which are and at all times herein material, were political organizations.

(2) Said Ordinance and the requirement herein alleged interfered with, restrained, coerced and abridged petitioners in the exercise of their rights and duties of political expression through membership in and activities on behalf of the Communist Party of the United States, a political organization, including without limitation speech, press, assembly, association and petition for redress of grievances.

(f) It denies to petitioners rights under Article I, Sections 9 and 13 of the Constitution of the State of California, in that it required petitioners to disclose their affiliations with or lack of affiliation with, the Communist Party of the United States and the Communist Political Association, both of which were at all times herein material, political

organizations, and thereby violated petitioners' rights to privacy and to be silent in such matters.

(g) It requires petitioners to give evidence against themselves concerning their affiliation, or lack of affiliation, with the Communist Party of the United States and the Com-
[fol. 14] munist Political Association, both of which were at all times herein material, political organizations, contrary to Article I, Section 13 of the Constitution of the State of California.

(h) It denies to petitioners due process of law in contravention of Article II, Section 9, and the Fourteenth Amendment to the Constitution of the United States, in that it subjects petitioners to penalties, including discharge and public stigmatization as disloyal, by reason of membership in the Communist Party of the United States or the Communist Political Association, both of which at all times herein material, were political organizations, prior to the adoption and effective date of said ordinance, and is thereby an ex post facto law and bill of attainder.

(i) It subjects petitioners, in contravention to Article I, Section 16, of the Constitution of the State of California, to penalties, including discharge and public stigmatization as disloyal, by reason of membership in the Communist Party of the United States or the Communist Political Association, both of which at all times herein material, were political organizations, prior to the adoption and effective date of said ordinance, and is thereby an ex post facto law and bill of attainder.

(j) It deprives petitioners of due process of law, in violation of the Fourteenth Amendment to the Constitution of
[fol. 15] the United States, and Article I, Section 13 of the Constitution of the State of California and the division of governmental powers prescribed in the Constitution of the United States and the State of California, in that said Ordinance constitutes a finding and determination by a legislative body pursuing legislative functions, that the Communist Party of the United States and the Communist Political Association, were and are engaged in the commission of a crime under the laws of the State of California and the United States to wit, the overthrow of the government by force and violence, and the authority to make such a finding is reserved solely to the Courts.

XIII

These petitioners have no plain, speedy or adequate remedy at law, for Section 112A of the Charter of the City of Los Angeles, which section controls the matter of discharge and reinstatement of employees, provides that the order of the respondent, Board of Civil Service Commissioners, shall be final and conclusive with respect to the removal, discharge or suspension of employees, and that therefore there is no method of appeal or any other procedure except by means of this petition, whereby the petitioners can question said determination and secure a complete adjudication of their rights and adequate and complete relief.

[fol. 16] Wherefore, petitioners pray that a day and date be fixed for the hearing of this petition, and upon the hearing thereof, a peremptory writ of mandate issue out of the above entitled Court:

1. Directed to the respondent, Board of Public Works of the City of Los Angeles, and the members thereof, to reinstate each petitioner to the positions from which they were removed, as set forth in paragraph III, and to permit each petitioner to perform the duties of said position, and to restore to each petitioner all the rights incident to said position, and to cause demands and pay checks to be issued to said petitioners for the amount of salary or wages due petitioners from the 7 day of January, 1949, until reinstated to duty at the monthly rates set forth in paragraph III, together with any general wage increases granted to said classifications since January 7, 1949; and

2. Ordering and commanding the respondent, Board of Civil Service Commissioners of the City of Los Angeles, and the members thereof, to certify that each petitioner has been duly and regularly appointed to the position from which he was removed, as indicated in paragraph III herein, and to approve the salary as compensation due him from January 7, 1949, and thereafter in accordance with the rules of the Board of Civil Service Commissioners; and

[fol. 17] 3. Ordering and commanding the respondent, Dan O. Hoye, City Controller of the City of Los Angeles, or the officer acting as such City Controller, to make payment to each petitioner for said amounts.

Petitioners further pray for such other relief as to the Court may seem meet; and for their costs incurred herein.

Charles J. Katz, Counsel for Petitioners.

[fol. 18] EXHIBIT 1 TO PETITION

Ordinance No. 94,004

An Ordinance to effectuate the provisions of Charter Section 432 and otherwise to insure the loyalty of the officers and employees of this City.

The People of the City of Los Angeles Do Ordain As Follows:

Section 1. Every person who is hereafter elected or appointed to an office or position in the service of the City of Los Angeles must, before entering upon the duties of his office or position, take and subscribe to the following oath:

I, ..., do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America and the State of California, and will support and defend the Constitution and laws of the United States of America and of the State of California and the laws of the City of Los Angeles against all enemies, foreign and domestic. I further swear (or affirm) that I do not advise, advocate or teach, and have not within the period beginning five (5) years prior to the effective date of the ordinance requiring the making of this oath or affirmation, advised, advocated or taught, the overthrow by force, violence or other unlawful means, of the Government of the United States of America or of the State of California and that I am not now and have not, within said period, been or become a member of or affiliated with any group, society, association, organization or party which advises, advocates or teaches, or has, within said period, advised, advocated or taught, the overthrow by force, violence or other unlawful means of the Government of the United States of America, or of the State of California. I further swear (or affirm) that I will not, while I am in the service of the City of Los Angeles, advise, advocate or teach, or be or become a member of or affiliated with any group, association, society, organization or party which advises, advocates or teaches,

or has within said period, advised, advocated or taught, the overthrow by force, violence or other unlawful means, of the Government of the United States of America or of the State of California, that I will well and faithfully discharge the duties of my office or employment in the service of the City of Los Angeles and that I take this whole obligation freely without any mental reservation or purpose of evasion, So Help Me God.

Sec. 2. Every person who now holds or occupies an office or position in the service of the City of Los Angeles must, within thirty (30) days after the effective date of this ordinance, or if he be on leave or under suspension for cause from the service of the city at such effective date, within thirty (30) days after his return to such service, take and subscribe to the oath set forth in Section 1 hereof.

Sec. 3. Every person who is hereafter elected or appointed to an office or position in the service of the City of Los Angeles must, before entering upon the duties of his office or position, execute an affidavit stating whether or not he is or ever was a member of the Communist Party of the United States of America or of the Communist Political Association, and if he is or was such a member, stating the dates when he became, and the periods during which he was, such a member; provided, however, that no additional affidavit shall be required on account of the transfer, demotion or promotion of any person who has once executed an affidavit under this section or under Section 4 hereof.

Sec. 4. Every person who now holds or occupies an office or position in the service of the City of Los Angeles must, within thirty (30) days after the effective date of this ordinance, or if he be on leave or under suspension for cause from the service of the city at such effective date, within thirty (30) days after his return to such service, execute an affidavit stating the facts required to be stated in the affidavit required by Section 3 of this ordinance.

Sec. 5. Each oath and affidavit required hereunder shall be taken, executed and signed before an officer authorized by law to administer oaths, and the jurat of such officer shall be affixed to the document so subscribed under the official seal of such officer. No officer or employee of the city shall require or receive the payment of any fee for administering any oath or affirmation provided for herein.

Sec. 6. The form of the affidavit required by Sections 3 and 4 hereof shall be prepared by the City Clerk. The City Clerk shall secure and maintain a supply of printed forms of the said affidavit and of the oath required by Sections 1 and 2 hereof, and shall furnish such forms as may be necessary to officers and employees of the city, to the Board of Civil Service Commissioners and to the heads of the departments of the city.

Sec. 7. The oaths and affidavits required hereby to be executed by officers and employees of the city who are appointed or employed under the provisions of Article IX of the City Charter shall be filed with the Board of Civil Service Commissioners and shall be a part of the officer's or employee's personnel record on file with the said board. All other oaths and affidavits required hereunder shall be filed with the City Clerk.

Sec. 8. It shall be the duty of each appointing power to require each officer or employee to execute and file an oath and affidavit as required hereby.

Sec. 9. Whenever an appointing authority is in doubt as to whether or not an officer or employee subject to his direction swore falsely in or has violated an oath required hereunder, he must investigate and determine the facts or, if he is the general manager of a department, he must either investigate and determine the facts or report the case to the board of commissioners of his department, and in the latter event the said board of commissioners must then investigate and determine the facts.

Sec. 10. (a) There shall be a committee of three (3) examiners, hereinafter called the "Committee," to investigate the cases hereafter described. One examiner shall be designated by the Board of Social Service Commissioners from among its members, one shall be designated by the Board of Police Commissioners from among its members, and the other shall be designated by the City Attorney from among his assistants or deputies. Such designations shall be made promptly after the effective date of this ordinance, and certificates thereof shall be filed with the Secretary of the Committee.

(b) The Secretary of the Board of Social Service Commissioners shall be and act as the Secretary of the Committee.

(c) As soon as the examiners are designated they shall meet and elect one of their number as chairman.

(d) The Board of Civil Service Commissioners shall, at the demand of the chairman of the Committee, furnish such stenographic assistance and supplies as may be needed.

(e) Either the Board of Social Service Commissioners or the Board of Police Commissioners may at any time designate another member to succeed the member of such board of commissioners then serving as an examiner, and the City Attorney may at any time designate another of his assistants or deputies to succeed the assistant or deputy City Attorney then serving as an examiner. After the designation of his successor, an examiner shall continue to serve as such until the completion of all pending matters, but the examiner designated as his successor shall upon his designation become an existing qualified examiner for all purposes connected with new matters.

(f) A majority of the examiners then serving may at any time elect another examiner to be chairman instead of the chairman then serving.

Sec. 11. A board of commissioners which is required hereby to conduct an investigation may do so by appointing the members of the Committee as examiners, under Section 89 of the Charter, to conduct the investigation and to submit their report thereon. Such board of commissioners is hereinafter called the "Commission" and the officer or employee to be investigated is hereinafter called the "Respondent." In each such case the provisions hereinafter contained in Sections 12 through 23, inclusive, shall be applicable.

Sec. 12 Such Commission shall transmit to the Secretary of the Committee a copy of its resolution determining that such investigation shall be made and appointing the members of the Committee as examiners to conduct such investigation. The Commission shall embody in such resolution, or transmit with such copy, a statement of the grounds for such investigation. The Secretary of the Committee shall then fix a time and place for beginning the inquiry, and shall give at least fifteen (15) days notice thereof to the examiners, the Respondent and the Commission. The notice to the Respondent shall include a statement of the grounds for the inquiry.

Sec. 13. The Committee shall meet at the time and

place fixed and shall then proceed to inquire into the matter. The Respondent shall be present at such meeting and at subsequent meetings of the Committee as directed by the management of his department.

Sec. 14. The Committee shall conduct a full investigation into the questions of whether or not the Respondent swore falsely in or violated any oath executed by him under this ordinance. A member of the Respondent's department designated by its appointing authority shall be present at each session of the investigation and shall present the facts constituting the grounds therefor.

Sec. 15. Any examiner shall have the power to administer oaths and affirmations to witnesses before the Committee. The chairman shall preside at all meetings of the Committee, direct the order of its business, and rule upon the admission of evidence. He may continue a meeting at any stage thereof, and may call a meeting at any time. He shall require the maintenance of order in the meeting room, may expel any disorderly person from the meeting room and may call upon the aid of the Chief of Police for such purposes. Any decision of the chairman shall be overruled at the demand of the other two (2) examiners.

Sec. 16. Upon the demand of an examiner the City Clerk shall issue a subpoena requiring the attendance as a witness of the person sought to be subpoenaed, at a time and place specified. Upon demand of such examiner, accompanied by an affidavit specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the questions involved in the investigation, and stating that the witness has the desired matters or things in his possession or under his control, such subpoena shall require the production of physical evidence. All such subpoenas shall be issued in the name of the city, and shall be attested with the city seal. The Chief of Police shall cause all such subpoenaes to be served by some member of the Police Department.

Sec. 17. The Respondent shall have the right to be present at all meetings of the Committee at which any evidence is received. He shall have the right to be confronted by all the witnesses who testify in the matter and to see or examine all written or physical evidence. He shall have the right to be represented by counsel, to cross examine witnesses other than the witnesses who are called by him, to obtain the issuance of subpoenas for the attendance of

witnesses and the production of evidence, and to produce evidence bearing upon the questions under consideration. The Respondent may testify as a witness, and it shall be his duty to testify as a witness at the direction of the appointing authority of his department. All testimony heard by the Committee shall be given under oath or affirmation. Before any evidence is received the chairman shall advise the Respondent of the Respondent's rights, privileges and duties hereunder and of his rights, privileges and immunities under the Constitution of the United States and under the Constitution of the State of California with respect to the Respondent giving testimony which might tend to incriminate or degrade him.

Sec. 18. Each examiner shall be present at all times during every meeting of such Committee; each must hear, examine or view all evidence considered, and must read all documents filed with or received by, such Committee, and each must read all reports proposed to be submitted by any examiner.

Sec. 19. At the direction of the chairman any of the proceedings before the Committee may be reported by a stenographic reporter in the employ of the city, and the report so made shall be transcribed at the direction of the chairman, or the commission. No copy of the transcript shall be delivered to anyone except by direction of the chairman, and upon the payment of the cost thereof to the City Treasurer, in an amount determined by the schedule of transcript fees now provided in the Code of Civil Procedure of this state; Provided, however, that if upon charges that he swore falsely in or violated an oath executed by him under this ordinance the Respondent is subsequently discharged from his position and requests a hearing before the Board of Civil Service Commissioners, or if such charges against the Respondent are filed with the Board of Fire Commissioners under Section 135 of the charter or with the Board of Police Commissioners under Section 202 of the charter, a true copy of the transcript shall be delivered to the Respondent upon his payment of the cost thereof.

Sec. 20. The meetings of the Committee shall not be public hearings. The Chairman may exclude from the meeting room any person other than the examiners, the Respondent and his counsel and such other persons as may

be present at the request of the Respondent; provided, however that if any reporter or any agent of any periodical publication is present at the request of the Respondent, at least one reporter or agent of each other periodical publication shall be allowed to be present. Neither the reports of proceedings before it nor the evidence received and filed by it nor the reports made by such Committee shall be public documents, and no person other than the examiners shall have a right to see or examine such papers or documents, except as provided by Sections 17, 19, and 21 hereof; provided, however, that such papers and documents shall be produced at the direction of the Board of Civil Service Commissioners in any hearing before it.

Sec. 21. When the Committee has considered all of the evidence received by it, it shall conclude its inquiry and shall prepare a written report upon the questions which it has considered. Any examiner who cannot agree with such a report shall prepare a separate report. Each report prepared shall contain a summary of the evidence considered, with findings of fact thereon, and conclusions and recommendations with a statement of the reasons therefor. A report agreed to by all of the examiners shall be signed by all of them; a report agreed to by two examiners shall be signed by both of them, and individual reports shall be signed by the examiners preparing them. All such reports, together with any transcript of the proceedings and all papers and things filed with or received by the Committee, shall thereupon be transmitted to the Commission.

Sec. 22. Upon its receipt and consideration of the report or reports from the Committee the Commission may adopt, reject or modify any such report in whole or in part, or may reconsider the matter in whole or in part, and shall thereafter take such action, or instruct its general manager to take such action respecting the retention or discharge of the Respondent, as appears to such Commission to be proper or to be required by law.

Sec. 23. Any person who fails or refuses without lawful excuse to attend at any meeting of the Committee, or to produce material evidence in his possession or under his control, as required by any subpoena served upon such person as provided for herein, or who, being present before such Committee willfully refuse to be sworn or to answer any material and proper question when directed by the

chairman of such Committee, shall be guilty of a misdemeanor and shall be punishable by a fine of not more than $500,00 or by imprisonment in the city jail for not more than six (6) months, or by both such fine and imprisonment.

Sec. 24. If any provision, section, paragraph, sentence, clause, phrase or word of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of any other part of this ordinance, and the Council hereby declares that it would have adopted each provision, section, paragraph, sentence, clause, phrase and word herein contained without regard to the adoption at the same time of other parts hereof.

Sec. 25. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was introduced at the meeting of the Council of the City of Los Angeles of September 8, 1948, and was passed at its meeting of October 21, 1948.

Walter C. Peterson, City Clerk. By A. McCoy, Deputy.

Approved this 29th day of October, 1948.

Fletcher Bowron, Mayor.

C. F. 27647, Supp. #1 and #2 (20598) 11/5 1t.

[fol. 19] Read carefully, sign, have your signature acknowledged, and return to your supervisor or appointing authority.

EXHIBIT 2 TO PETITION

OATH AND AFFIDAVIT

A. Oath of Office or Employment

I, —— —— (Type or Print Name in Full) do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America and the State of California, and will support and defend the Constitution and laws of the United States of America and of the State of California and the laws of the City of Los Angeles against all

enemies, foreign and domestic. I further swear (or affirm) that I do not advise, advocate or teach, and have not within the period beginning five (5) years prior to the effective date (December 6, 1948) of the ordinance requiring the making of this oath or affirmation, advised, advocated or taught, the overthrow by force, violence or other unlawful means, of the Government of the United States of America or of the State of California and that I am not now and have not, within said period, been or become a member of or affiliated with any group, society, association, organization or party which advises, advocates or teaches, or has, within said period, advised, advocated or taught, the overthrow by force, violence or other unlawful means of the Government of the United States of America, or of the State of California. I further swear (or affirm) that I will not, while I am in the service of the City of Los Angeles, advise, advocate or teach, or be or become a member of or affiliated with any group, association, society, organization or party which advises, advocates or teaches, or has within said period, advised, advocated or taught, the overthrow by force, violence or other unlawful means, of the Government of the United States of America or of the State of California, that I will well and faithfully discharge the duties of my office or employment in the service of the City of Los Angeles and that I take this whole obligation freely without any mental reservation or purpose of evasion, So Help Me God.

B. Affidavit of Non-Membership

I am not and have never been a member of either the Communist Party of the United States of America or of the Communist Political Association.

—— ——, Signature; —— ——, Department.

The above Oath was taken and subscribed and the above Affidavit was subscribed and sworn to before me this —— day of ——, 19—.

Walter C. Peterson, City Clerk, City of Los Angeles, State of California. By —— ——, Deputy.

or

—— ——, Notary Public. In and for the County of ——, State of California.

Instructions:

1. An ordinance of the City of Los Angeles requires all officers and employees of the City to take an Oath of Office or Employment and to sign an Affidavit as to membership in the Communist Party of the United States of America or the Communist Political Association.

2. If you are now or ever have been a member of the Communist Party of the United States of America or the Communist Political Associaton, cross out the Affidavit of Non-Membership above and ask for and fill out the form entitled "Affidavit as to Membership."

3. If a Deputy City Clerk is not available, the Oath and Affidavit may be acknowledged by a Notary Public who will fill in the Notary Public form above and affix his seal.

[fol. 20] Read carefully, sign, have your signature acknowledged, and return to your supervisor or appointing authority.

AFFIDAVIT AS TO MEMBERSHIP

—— —— (Type or Print Name in Full) being duly sworn, says:

1. I am not now and have never been a member of the Communist Party of the United States of America.

2. I am not now and have never been a member of the Communist Political Association.

3. I am now a member of the Communist Party of the United States of America. I became such a member on —— ——, 19—. I was previously a member from —— ——, 19—, to —— ——, 19—.

4. I am now a member of the Communist Political Association. I became such a member on —— ——, 19—. I was previously a member from —— ——, 19—, to —— ——, 19—.

5. I am not now, but I was a member of the Communist Party of the United States of America during the period from —— ——, 19—, to —— ——, 19—, and during the period from —— ——, 19—, to —— ——, 19—.

6. I am not now, but I was a member of the Communist Political Association during the period from —— ——, 19—,

to —— ——, 19 —, and during the period from —— ——, 19 —, to —— ——, 19—.

—— ——, Signature; —— ——, Department.

The above Affidavit was subscribed and sworn to before me this —— day of ——, 19—.

Walter C. Peterson, City Clerk, City of Los Angeles, State of California. By —— ——, Deputy.

or

—— ——, Notary Public. In and for the County of ——, State of California.

Instructions:

1. Fill in the above if you are now or ever have been a member of the Communist Party of the United States of America, or the Communist Political Association. Cross out all the statements which do not apply to you. Write the correct dates in the statements which do apply to you.

2. If a Deputy City Clerk is not available, the Affidavit may be acknowledged by a Notary Public who will fill in the Notary Public form above and affix his seal.

[fols. 21-31] EXHIBIT 3 TO PETITION

City of Los Angeles, California
Fletcher Bowron, Mayor

Edmund G. Evans, Personnel Director
Department of Public Works, Personnel Division
590 City Hall, Los Angeles 12
Michigan 5211

December 29, 1948
Registered Mail

Mr. Ray H. Garner,
1127 West 112th Street,
Los Angeles 44, California

Dear Mr. Garner:

Under the provisions of Ordinance No. 94,004, each employee of the City who can truthfully do so, must take and sign an oath of loyalty to the United States. The ordi-

nance sets forth the form of the oath and prescribes January 5, 1949, as the end of the filing period. Within the same period each employee must sign and file an affidavit stating whether or not he is or ever has been a member of the Communist Party or the Communist Political Association.

The Board of Public Works does not wish any employee to fail to sign the oath or the affidavit, either because he has not been given an opportunity to do so or because of any ignorance or misunderstanding as to the requirements, purposes or application of the ordinance.

Your supervisor reports that you were given an opportunity to sign the oath and affidavit but that you stated your refusal to do so. In order that the facts may be clear and without misunderstanding, you are requested to forward to this office a memorandum in writing, stating fully your position in the matter and all of your reasons therefor.

Yours truly,

E. G. Evans, Personnel Director

EGE:sr
Exhibit "3"

[fol. 32-55] EXHIBIT 4 TO PETITION

Los Angeles, Calif., Jan. 3rd, 1949.

Dept. of Public Works.
Personnel Division.
590 City Hall.
Los Angeles, Calif.
% E. G. Evans.

Dear Sir;

In reply to your letter of Dec. 29th, 1948, relative to Ordinance No. 94,004 and my failure to so far sign the loyalty oath, I wish to state that I (with others) have challenged the legality of the ordinance in the courts, so I do not wish to sign, or refuse to sign, pending the outcome of the legal action.

The City Attorney has agreed that no action will be taken in this matter pending the outcome of the court case.

Yours Respectfully, Ray H. Garner, 1127 W. 112th St., Los Angeles 44, Calif.

[fol. 55a] EXHIBIT 5 TO PETITION

Notice of Removal, Discharge or Suspension

Read and strictly comply with the following:

A copy of this statement must be served upon the person removed, discharged or suspended, personally, or by leaving a copy thereof at his or her last known place of residence if he or she can not be found. Service by mail must not be made. After serving, file original with the Board of Civil Service Commissioners. (See Charter provision on reverse side hereof, which must be strictly complied with.)

Los Angeles, Calif., January 6, 1949.

To the Honorable
The Board of Civil Service Commissioners,
11 City Hall, Los Angeles, Calif.

Gentlemen:

You are hereby notified that The Board of Public Works has discharged effective January 7, 1949, Ray H. Garner from the position of Equipment Operator—Code 3525 in the Street Maintenance Division of the City for the following cause (state fully), to-wit: Bureau of Street Maintenance.

Cause I. He failed to take and subscribe to the oath set forth in Section 1 of Ordinance No. 94,004 passed by the Council of the City of Los Angeles on October 21, 1948, as required by the provisions of the said ordinance.

Cause II. He failed to execute an affidavit stating whether or not he was or ever had been a member of the Communist Party of the United States of America or of the Communist Political Association, as required by — in provisions of the said ordinance. Approved Jan. 7, 1949.

Respectfully yours, Board of Public Works, Milton Offner, Secretary.

[fol. 55b-58] Article IX of the City Charter

Sec. 112 (a). Any board or officer having the power of appointment of officers, members and employees in any department of the government of the city, shall have the power to remove, discharge or suspend any officer, member or employee of such department; but no person in the classified civil service of the city, other than an unskilled

laborer employed by the day, shall be removed, discharged or suspended, except for cause, which shall be stated in writing by the board or officer having the power to make such removal, discharge or suspension, and filed with the Board of Civil Service Commissioners, with certification that a copy of such statement has been served upon the person so removed, discharged or suspended, personally, or by leaving a copy thereof at his last known place of residence if he can not be found. Upon such filing such removal, discharge or suspension shall take effect. Within fifteen days after such statement shall have been filed, the said board, upon its own motion, may, or upon written application of the person so removed, discharged or suspended, filed with said board within five days after service upon him of such statement, shall proceed to investigate the grounds for such removal, discharge or suspension. If after such investigation said board finds, in writing, that the grounds stated for such removal, discharge or suspension were insufficient or were not sustained, and also finds in writing that the person removed, discharged, or suspended is a fit and suitable person to fill the position from which he was removed, discharged, or suspended, said board shall order said person so removed, discharged or suspended, to be reinstated or restored to duty. The order of said board with respect to such removal, discharge or suspension, shall be forthwith certified to the appointing board or officer, and shall be final and conclusive; provided, that the order of any appointing board or officer suspending any person because of lack of funds in such department shall be final, and shall not be subject to review by said Board of Civil Service Commissioners. If the Board of Civil Service Commissioners shall order that any person removed, discharged or suspended under the provisions of this section be reinstated or restored as above provided, the person so removed, discharged or suspended shall be entitled to receive compensation from the city the same as if he had not been removed, discharged or suspended by the appointing board or officer.

(b) The provisions of this section shall not apply to those members of the Police Department appointed under civil service rules and regulations and sworn in, as provided by law, to perform the duties of regular police officers, nor to those members of the Fire Department appointed

under civil service rules and regulations to perform the duties of regular firemen; notwithstanding anything contained in sections 135 and 202 of this charter, all other employees of both departments shall be subject to the provisions of this section.

[fol. 59] EXHIBIT 6 TO PETITION

City of Los Angeles, California
Fletcher Bowron, Mayor

The Board of Civil Service Commissioners
11 City Hall, Los Angeles 12
Michigan 5211
Joseph W. Hawthorne, General Manager

Commissioners: Samson A. Lindauer, President; Justin W. Gillette, Vice-President; Charles E. Arnn, Ransom M. Callicott, Ida S. Lazard; S. May Smith, Secretary.

March 2, 1949

Mr. Charles J. Katz,
403 West 8th Street,
Los Angeles, California

Dear Sir:

This informs you that in regular session on March 1, 1949, the Board of Civil Service Commissioners took under final consideration appeals from discharge pursuant to provisions of City Ordinance No. 94004 of seventeen city employees, all represented by you at hearings held February 10, 1949, and February 18, 1949.

I am instructed to inform you that in each of the appeals received from the seventeen employees named below the following motion was duly adopted by the Commission:

> "The board having heretofore taken under submission the matter of the discharge of (name of appellant) and having considered the matter and the evidence received therein, the board now finds (1) that the grounds and charges stated for such discharge were and are sufficient and (2) that such grounds and charges [fol. 60] were and are true. It is therefore ordered

" that the said discharge of (name of appellant) be sustained."

Ray H. Garner	Margaret B. Haskell
John R. Brown	Aida L. Beldner
Cornelius Lawrence	Carrie L. Dick
Frank Torreano	Eugene R. Hallett
Harry N. Beckerman	Edward M. Havens
Vera S. Mann	Dana Platt
Ola Ross Pacifico	Eugene E. Reed
Frances Schwartz	Willard R. Smart
Mary E. Grunewald	

Each of the above named individuals is being notified of this action.

Yours very truly,

S. May Smith,
Secretary

SMS: md

[fols. 61-77] EXHIBIT 7 TO PETITION

Los Angeles, Calif.
March 7, 1949

City Clerk,
City of Los Angeles,
Room 195, City Hall,
Los Angeles, Calif.

Dear Sir:

In accordance with Section 112½ of the Charter of the City of Los Angeles I hereby demand my back pay in the approximate amount of $640.00 and any other emoluments which is due me in my position of Equip. Opr. in the Department of Public Works, City of Los Angeles from January 7, 1949 to date, and from now on until my reinstatement or until the final adjudication by the courts of the disputed dismissal together with such wage increases as may go with my position because of any salary adjustments or salary increases due to promotions to which I may be

entitled, together with compensation for any expenses to which I have been put because of my discharge.

Very truly yours,
Ray H. Garner

Subscribed and sworn to before me this 6 day of March, 1949. Miss Frieda Rapoport, Notary Public in and for the County of Los Angeles, State of California. My Commission Expires Sept. 15, 1950.

[fol. 78-96] EXHIBIT 8 TO PETITION

Los Angeles, Calif.
March 7, 1949

Honorable Civil Service Commission,
City of Los Angeles,
Room 11, City Hall,
Los Angeles, Calif.

Gentlemen:

In accordance with Section 112½ of the Charter of the City of Los Angeles, I am submitting this claim to, and making a demand upon, the Board of Civil Service Commissioners of the City of Los Angeles for my reinstatement as Equip. Opr. as a classified civil service employee of the City of Los Angeles. I consider my discharge for failure to sign the oath and affidavit under Los Angeles City Ordinance #94004 by the appointing authority and the ruling of the Civil Service Commission in upholding such discharge to be illegal, wrongful and invalid.

Very truly yours,
(S.) Ray H. Garner

[fol. 97] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

No. 559954

RESPONDENTS' POINTS AND AUTHORITIES UNDER SECTION 1107, CODE OF CIVIL PROCEDURE IN OPPOSITION TO THE GRANTING OF AN ALTERNATIVE WRIT OF MANDATE—Filed May 25, 1949

I

The Petition does not State Facts Sufficient to State a Cause of Action to Support the Issuance of an Alternative Writ of Mandate or to Show that the Petitioners or Any of Them are Entitled to any Relief Whatever as Against any of the Respondents.

Any of the charges stated against the petitioners was obviously sufficient to support the discharge of each of the petitioners. A similar question was before this court in cases of *Steiner* v. *County of Los Angeles* and *Parker* v. *County of Los Angeles*. Appeals were taken in those cases and consolidated for hearing in the District Court of Appeal. The opinion of the District Court affirming the judgments of this court is reported in 88 A.C.A. at page 487. A petition for hearing in the Supreme Court was denied on January 10, 1949. The decision there is determinative of the claims of the petitioners here.

It is well settled that a public employee has no property or contract right in his position, and that no question of [fol. 98] due process arises upon his discharge.

Perez v. *Board of Police Commissioners*, 78 Cal. App. 2d 638,

Risley v. *Board of Civ. Service Comm'ers*, 60 Cal. App. 2d 32,

Christal v. *Board of Police Comm'ers*, 33 Cal. App. 2d 564,

Ludolph v. *Board of Police Comm'ers*, 30 Cal. App. 2d 211,

Boyd v. *Pendergast*, 57 Cal. App. 504.

II

There is a Misjoinder of Parties Plaintiff

In a mandamus proceeding respondents cannot safely demur without answering to the merits of the petition at the same time. Since the issuance of a writ of mandate is an extraordinary remedy and one which is largely within the discretion of the court, it is appropriate that objections to the form of the petition should be suggested to the court at this time. If the petitioners are disposed to file an amended petition in order to meet such objections they may do so, and the respondents are thus not compelled to answer a petition until one is presented which sets forth the claims of the petitioners in such proper form that an answer thereto will clearly establish the issues of fact and of law upon which the case is to be tried.

Seventeen petitioners have here filed a document entitled [fol. 99] "Consolidated Petitions for Writ of Mandate". No authority for such a document can be found in the statutes, and reason suggests none. No doubt it is thought by the petitioners that their joinder is within the provisions of Section 378 of the Code of Civil Procedure because the sufficiency of Cause Two stated against 15 of the petitioners, and of Cause One stated against the other 2 as related on pages 6 and 7 of the petition, is a question common to the complaints of each of the petitioners. It is not enough, however, that there be a question of law or fact common to the cases of all of the plaintiffs who propose to join in an action, because in addition all of the plaintiffs must have an interest in the subject of the action or a right to relief arising out of the same transaction or series of transactions. Neither of these latter conditions exists here. The subject of each petitioner's action is his discharge from his position. None of the petitioners has any interest in the discharge of any of the other petitioners. The relief which each petitioner seeks arises out of his discharge and of the determination by the Board of Civil Service Commissioners, after a hearing in his case, that it would not direct his reinstatement. There is no connection between these transactions in the case of one petitioner and similar transactions in the cases of the other petitioners, except that there was some similarity of form and procedure in each case. Similarity of form does not effect [fol. 100] identity.

Joinder of parties plaintiff is permitted only where there is such a common interest in the subject matter or such identity of the transactions involved. Interest in the subject of the action means a legal or property interest.

Parmeley v. *Boone*, 35 Cal. App. 2d 517.

Peters v. *Bigelow*, 137 Cal. App. 135.

Gartler v. *First National Bank of San Pedro*, 88 Cal. App. 411.

Proper parties, as distinguished from necessary parties, are those without whom a substantial decree may be made, but not one which shall completely settle all of the questions which may be involved in the controversy, and conclude the rights of all the persons who have any interest in the subject matter of the litigation.

Tregear v. *Etiwanda Water Co.*, 76 Cal. 537.

It is evident that a decree in the case of any one of the petitioners would completely settle all of the questions involved in controversy between him and the respondents, and that it would conclude the rights of all the persons who have any interest in the subject matter of such litigation. The other petitioners are therefore not proper parties to join with any of the petitioners in his action.

[fol. 101]

III

The Petition is Ambiguous and Uncertain

The petition incorporates 8 exhibits by reference. Of these Exhibit 3 consists of copies of 13 letters, Exhibit 4 consists of copies of 19 letters, Exhibit 5 consists of copies of 17 Notices of Discharge, Exhibit 7 consists of copies of 17 claims, and Exhibit 8 consists of copies of 17 demands for reinstatement. Comparisons of the several parts of Extion, all employees of the Board of Public Works, but that rather only four of them were employees in the Department of Public Works, seven were employed in the Department of Water and Power, four were employed in the Department of Health and two were employed in the Library Department. This ambiguity raises questions of misjoinder of the respondents as well as possible nonjoinder of necessary respondents, and emphasizes the defects which follow from the failure of the petitioners to set forth their causes of action reparately and from the initial error in joining all of the petitioners in one proceeding.

IV

The Petitioners have Joined Seventeen Causes of Action Without Stating them Separately.

Section 427, Code of Civil Procedure

It is submitted that for the several reasons given the [fol. 102] court should deny the application for the issuance of an alternative writ of mandate.

Respectfully submitted, Ray L. Chesebro, City Attorney; Bourke Jones, Assistant City Attorney; George William Adams, A. L. Lawson and Alan G. Campbell, Deputy City Attorneys, Attorneys for Respondents.

(Title of Cause).

(Affidavit of Service by Mail—1013a, C. C. P.)

STATE OF CALIFORNIA,
County of Los Angeles, ss.

Jean Kill, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is: 405 City Hall, Los Angeles 12, California; that on the 25th day of May, 1949, affiant served the within Respondents' Points and Authorities Under Section 1107, C.C.P. in Opposition of the Granting of an Alternative Writ of Mandate on the Petitioners in said action, by placing a true copy thereof in an envelope addressed to the attorney of record for said Petitioners at the office address of said attorney, as follows: [fol. 103] "Charles J. Katz, Attorney at Law, 403 West Eighth Street, Los Angeles 14, California"; and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorney for the persons by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed, or there is a regular communication by mail between the place of mailing and the place so addressed.

Jean Kill

Subscribed and sworn to before me this 25th day of May, 1949. Sabina M. Ross, Notary Public in and for the County of Los Angeles, State of California. (Seal)

My Commission Expires June 7, 1951.

[Endorsed]: Filed May 25, 1949, Harold J. Ostly, County Clerk, By J. E. Shaw, Deputy.

[fol. 104] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

RAY H. GARNER; HARRY BECKERMAN; AIDA BELDNER; JOHN R. BROWN; Carrie L. Dick; Mary E. Grunewald; Eugene Hallett; Margaret B. Haskell; Edward Havens; Cornelius Lawrence; Vera Mann; Ola Ross Pacifico; Dana Platt; Eugene Reed; Frances Schwartz; Willard Smart; Frank Torreano; Petitioners,

vs.

BOARD OF PUBLIC WORKS OF THE CITY OF LOS ANGELES; Clarence J. Derrick, Joseph O. Donovan, Louis M. Dreves, Frank Gillelen, Edward L. Taylor, and Milton Offner, As Members of the Board of Public Works of the City of Los Angeles; Board of Civil Service Commissioners of the City of Los Angeles; Samson A. Lindauer, Justin W. Gillette, Charles E. Arnn, Ransom M. Callicott, and Mrs. Ida S. Lazard, As Members of the Board of Civil Service Commissioners of the City of Los Angeles; Dan O. Hoye, City Controller of the City of Los Angeles; The City of Los Angeles, a municiual corporation; Respondents.

ORDER DENYING ALTERNATIVE WRIT OF MANDATE

The People of the State of California Send Greetings to:

Board of Public Works of the City of Los Angeles; Clarence J. Derrick, Joseph O. Donovan, Louis M. Dreves, Frank Gillelen, Edward L. Taylor, and Milton Offner, as members of the Board of Public Works of the City of Los Angeles; Board of Civil Service Commissioners of the [fol. 105] City of Los Angeles; Samson A. Lindauer, Justin W. Gillette, Charles E. Arnn, Ransom M. Callicott, and Mrs. Ida S. Lazard, as members of the Board of Civil

Service Commissioners of the City of Los Angeles; Dan O. Hoye, City Controller of the City of Los Angeles; The City of Los Angeles, a municipal corporation, Respondents.

Whereas, it appears to us by the verified consolidated petitions of Ray H. Garner, Harry Beckerman, Aida Beldner, John R. Brown, Carrie L. Dick, Mary E. Grunewald, Eugene Hallett, Maragaret B. Haskell, Edward Havens, Cornelius Lawrence, Vera Mann, Ola Ross Pacifico, Dana Platt, Eugene Reed, Frances Schwartz, Willard Smart, and Frank Torreano, the parties beneficially interested, that an alternative writ of mandate should issue herein and that the petitioners have no plain, speedy or adequate remedy in the course of law, therefore we do command you that immediately upon receipt of this writ you do make an order reinstating each petitioner to the positions from which they were removed, as set forth in paragraph III of said verified consolidated petitions, and to permit each petitioner to perform the duties of his respective position, and to restore to each petitioner all the rights incident to said position, and to cause demands and pay checks to be issued to said petitioners in the amount of salary or wages due from January 7, 1949, at the rates set forth in paragraph III of said verified consolidated petitions, together [fol. 106] with any general wage increases granted to said classifications since January 7, 1949, or that you show cause before this Court at the Courtroom thereof in the City Hall, City of Los Angeles, State of California, on the —— day of ——, 1949, at —— o'clock ——M., in Department —— thereof why you have not done so.

Witness the Honorable —— ——, Judge of this Court, Attest my hand and the seal of said Court this 18 day of May, 1949.

Harold J. Ostly, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles. By —— ——, Deputy Clerk. (Seal Superior Court Los Angeles County.)

Denied May 25, 1949.

Hanson, J.

[Endorsed:] Filed May 25, 1949. Harold J. Ostly, County Clerk. By J. E. Shaw, Deputy.

[fol. 107] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

[Title omitted]

NOTICE OF APPEAL—Filed June 20, 1949

To the Honorable Clarence M. Hanson, Judge of the Above Entitled Court: and

To the Clerk of the Above Entitled Court; and

To Ray L. Chesebro, Esquire, City Attorney, Bourke Jones, Esquire, Assistant City Attorney, George William Adams, Esquire, Deputy City Attorney, A. L. Lawson, Esquire, Deputy City Attorney, and Alan G. Campbell, [fols. 108-113] Esquire, Deputy City Attorney, Attorneys for Respondent:

You, and Each of You, Will Please Take Notice:

That Ray H. Garner, Harry Beckerman, Aida Beldner, John R. Brown, Carrie L. Dick, Mary E. Grunewald, Eugene Hallett, Margaret B. Haskell, Edward Havens, Cornelius Lawrence, Vera Mann, Olda Ross Pacifico, Dana Platt, Eugene Reed, Frances Schwartz, Willard Smart, and Frank Torreano, the petitioners in the above entitled action, hereby appeal to the District Court of Appeal of the State of California, in and for the Second Appellate District, from that certain Order Denying Alternative Writ of Mandate made and entered by the Superior Court of the State of California, in and for the County of Los Angeles, on May 25, 1949, wherein and whereby the petitioners' application for an alternative writ of mandate was denied, and from the whole of said Order.

Dated this 17 day of June, 1949.

Charles J. Katz, Attorney for Petitioners and Appellants.

[File endorsement omitted.]

[fol. 114] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

[Title omitted]

PETITION FOR HEARING IN SUPREME COURT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the State of California:

Ray H. Garner, *et al.*, petitioners here and plaintiffs-appellants below, respectfully pray that this Honorable Court order that the above entitled case be transferred to the Supreme Court for hearing and decision after decision of the District Court of Appeal, Second Appellate District, Division One, affirming the order of the trial court in favor of respondents upon the ground that a hearing in this Court after decision by said District Court of Appeal is necessary to secure the settlement of important questions of law.

[fol. 115] Statement of the Case

The petitioners here filed their consolidated petitions for writ of mandate [R. 1-96][1] on May 18, 1949, in the Superior Court of Los Angeles County, seeking restoration to their positions in the classified civil service of the City of Los Angeles from which they had been removed for their failure to comply with the provisions of a so-called "loyalty order" adopted by the Council of the respondent City of Los Angeles on October 21, 1948, as City Ordinance Number 94,004 [Ex. 1, R. 18].

The petitioners alleged in their petition for writ of mandate that they had been for many years members of the classified civil service of the City of Los Angeles holding positions ranging from that of tree trimmer in the case of petitioner Eugene Reed to that of equipment operator in the case of petitioner Ray H. Garner [R. 2-4].

On or about October 21, 1948, the petition further alleged, the Council of the City of Los Angeles enacted the aforesaid Ordinance Number 94,004 which became effective December 6, 1948. The said Ordinance required employees of

[1] Record references are to the clerk's certified transcript on appeal.

the City of Los Angeles to subscribe to an oath of loyalty which included among other requirements an affirmation that petitioners had not within a period of five years prior to the effective date of the Ordinance advised, advocated or taught the forcible overthrow of the Government of the United States or of the State of California, and to execute an affidavit of membership or nonmembership in the Communist Party of the United States and the Communist Political Association [Ex. 2, R. 19].

Fifteen of petitioners declined to sign either the oath or affidavit; two of the petitioners, Ola Ross Pacifico and [fol. 116] Frances Schwartz, did sign the oath but not the affidavit. All seventeen were discharged from their civil service employment.

Rule XVII of the respondent Board of Civil Service Commissioners of the City of Los Angeles in effect at all times herein involved provides in pertinent part as follows:

> "* * * but no person in the classified civil service of the city, other than an unskilled laborer employed by the day,[2] shall be removed, discharged or suspended except for cause which shall be stated in writing by the board or officer having the power to make such removal, discharge or suspension, and filed with the Board of Civil Service Commissioners * * *."

Typical of the written notices of discharge in the cases of the fifteen of the seventeen discharged petitioners is the notice given by the respondent, Board of Public Works, to the petitioner, Garner [Ex. 5, R. 57]:

> "You are hereby notified that the Board of Public Works has discharged, effective January 7, 1949, Ray H. Garner from the position of Equipment Operator-Code 3525 in the Street Maintenance Division, Bureau of Street Maintenance Division, Bureau of Street Maintenance of the City for the following cause (state fully), to wit:
>
> "Cause I. He failed to take and subscribe to the oath set forth in Section 1 of Ordinance No. 94,004

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[2] None of the petitioners was such an unskilled laborer employed by the day. [See paragraph III, R. 2, 3, and 4.]

passed by the Council of the *State* of Los Angeles on October 21, 1948, as required by the provisions of the said ordinance.

[fol. 117] "Cause II. He failed to execute an affidavit stating whether or not he was or ever had been a member of the Communist Party of the United States of America or of the Communist Political Association, as required by the provisions of said ordinance."

In the case of the two remaining petitioners, Ola Ross Pacifico and Frances Schwartz, the ground of discharge is limited to the failure to execute the affidavit stating whether she was or ever had been a member of the named political party, and the failure to execute such affidavit notwithstanding direction to do so [R. 58].

No other ground for discharge of any petitioners was ever asserted or claimed. Following hearings before the Board of Civil Service Commissioners held on February 10 and February 18, 1949, that Board on March 2, 1949, by one notice addressed to counsel for all seventeen petitioners, sustained each and all of the discharges [see Ex. 6, R. 59-60].

Thereupon and within the time prescribed by the City Charter, each petitioner filed a claim for unpaid salaries with the City Clerk [Ex. 7, R. 61-77, incl.] and an application for reinstatement. On or about March 15, 1949, both the request for unpaid salary and the application for reinstatement were denied by respondents in purported pursuance of Ordinance Number 94,004 [R. 9-10, par. X].

It is alleged in the verified petition and not denied that

"but for the matter of asserted failure to comply with the provisions of Ordinance Number 94,004, petitioners each performed the services required of him in a competent and satisfactory manner; and petitioners were at all times herein mentioned fit and suitable persons to fill the positions from which they were removed." [R. 10, par. X.]

[fol. 118] The petition for the issuance of an alternative writ of mandate was denied on May 25, 1949, by the Honorable Clarence M. Hanson, Judge of the Los Angeles Superior Court, without opinion [R. 104-106]. On July 19, 1950, the order was affirmed by the District Court of Appeal, Second Appellate District, Division One. The opinion is

reported in 98 A. C. A. 694 and is set forth at length in the appendix annexed to this petition. Since substantial legal issues raised in the briefs were not considered in the opinion of the District Court of Appeal, a petition for rehearing was filed setting forth the failure to consider such issues. The petition for rehearing was denied on August 8, 1950.

Questions Presented

1. Whether in the light of the decision of the United States Supreme Court in *Parker and Steiner* v. *County of Los Angeles*, this Court should finally determine the same fundamental constitutional questions there involved and which are raised here by the enactment of the City of Los Angeles loyalty ordinance.

2. Whether the provisions of Ordinance No. 94,004 requiring the employees of the City of Los Angeles to execute an expurgatory test oath violate the due process guarantees of the State and Federal Constitutions.

3. Whether the provisions of Ordinance No. 94,004 constitute an *ex-post facto* law and bill of attainder in violation of the applicable provisions of the State and Federal Constitutions.

4. Whether the requirements of the loyalty oath imposed upon employees in the classified civil service of the City of Los Angeles constitute unlawful burdens and conditions in violation of the rights guaranteed to them as citizens [fol. 119-121] and public employees by the State and Federal Constitutions.

5. Whether the provisions of Ordinance No. 94,004 deprive the petitioners of freedom of speech, press and assembly and the right to petition for redress of grievances in violation of the applicable provisions of the State and Federal Constitutions.

6. Whether Ordinance No. 94,004 was lawfully enacted by the City Council of the City of Los Angeles.

[fols. 122-125]

Argument

I

The Decision of the United States Supreme Court in Parker and Steiner Against County of Los Angeles Returning the Loyalty Order Cases to the Court of California for Decision Emphasizes the Importance of the Constitutional

Issues Here Involved and the Need for a Final Determination by This Court of the Validity of the So-called Loyalty Ordinance Enacted by the City of Los Angeles.

[fols. 126-134] II

The Provisions of the Ordinance Deprive the Petitioners of Substantive and Procedural Due Process of Law in Violation of Article VI, Section 3, and the Fourteenth Amendment to the Constitution of the United States; Article I, Section 13, and Article XX, Section 3, of the Constitution of the State of California; and Sections 100, 103, and 112 of the Charter of the City of Los Angeles.

[fols. 135-140] III

The Ordinance Constitutes a Bill of Attainder and Ex Post Facto Law in Violation of Article I, Section 10, of the Constitution of the United States and Article I, Section 16, of the Constitution of California.

[fols. 141-150] IV

The Provisions of the Ordinance Affecting Civil Service Employees in the City of Los Angeles Deprives the Petitioners of Their Liberty and Property Without Due Process of Law and the Equal Protection of the Laws in Violation of the Fourteenth Amendment to the Constitution of the United States and Article I, Sections 1, 13, 21 and 23, of the Constitution of the State of California.

[fols. 151-158] V

The Ordinance Is a Compulsory Loyalty Test Oath and Deprives Petitioners of Freedom of Speech, Press, Assembly, Association and the Guarantees of a Republican Form of Government in Violation of Article IV, Section 4, and the First, Ninth, Tenth and Fourteenth Amendments to the Constitution of the United States and Article I, Sections 1, 2, 3, 9, 10, 21 and 23, of the Constitution of the State of California.

[fols. 159-163] VI

Ordinance No. 94,004 Was Passed by the City Council of Los Angeles Alone. It Was Neither Adopted by the Legislature of the State of California, Nor by Initiative

Petition Signed by Fifteen Per Cent of the Registered Electors of the City. Since Ordinance No. 94,004 Amends the Charter of the City of Los Angeles, and Since It Was Not Adopted in the Manner Established by Article XI Section 8, Subdivision (h), of the State Constitution for the Adoption of Charter Amendments, It Is Void.

[fol. 164] APPENDIX

OPINION OF THE DISTRICT COURT OF APPEAL

In the District Court of Appeal of the State of California, Second Appellate District, Division One.

Ray H. Garner, *et al.*, Petitioners and Appellants, vs. Board of Public Works of the City of Los Angeles, *et al.*, Respondents. Civil No. 17411.

Filed Jul. 19, 1950.

Appeal from an order of the Superior Court of Los Angeles County denying alternative writ of mandate, Clarence M. Hanson, Judge.

For Appellants: Charles J. Katz.

For Respondents—Ray L. Chesebro, City Attorney; Bourke Jones, Assistant City Attorney, George William Adams, A. L. Lawson, and Alan G. Campbell, Deputy City Attorneys.

The City of Los Angeles adopted an ordinance, in part as follows:

"An Ordinance to effectuate the provisions of Charter Section 432 and otherwise to insure the loyalty of the officers and employees of this City.

"The People of the City of Los Angeles Do Ordain as Follows:

"Section 1. Every person who is hereafter elected or appointed to an office or position in the service of the City of Los Angeles must, before entering upon the duties of his office or position, take and subscribe to the following oath:

"I, ..., do solemnly swear (or affirm) that I will bear true faith and allegiance to the United [fol. 165] States of America and the State of California, and will support and defend the Constitution and laws of the United States of America and of the State of California and the laws of the City of Los Angeles against all enemies, foreign and domestic. I further swear (or affirm) that I do not advise, advocate or teach, and have not within the

period beginning five (5) years prior to the effective date of the ordinance requiring the making of this oath or affirmation, advised, advocated or taught, the overthrow by force, violence or other unlawful means, of the Government of the United States of America or of the State of California and that I am not now and have not, within said period, been or become a member of or affiliated with any group, society, association, organization or party which advises, advocates or teaches, or has, within said period, advised, advocated or taught, the overthrow by force, violence or other unlawful means of the Government of the United States of America, or of the State of California. I further swear (or affirm) that I will not, while I am in the service of the City of Los Angeles, advise, advocate or teach, or be or become a member of or affiliated with any group, association, society, organization or party which advises, advocates or teaches, or has within said period, advised, advocated or taught, the overthrow by force, violence or other unlawful means, of the Government of the United States of America or of the State of California, that I will well and faithfully discharge the duties of my office or employment in the service of the City of Los Angeles and that I take this whole obligation freely without any mental reservation or purpose of evasion, So Help Me God.

"Sec. 2. Every person who now holds or occupies an office or position in the service of the City of Los Angeles [fol. 166] must, within thirty (30) days after the effective date of this ordinance, or if he be on leave or under suspension for cause from the service of the city at such effective date, within thirty (30) days after his return to such service, take and subscribe to the oath set forth in Section 1 hereof.

"Sec. 3. Every person who is hereafter elected or appointed to an office or position in the service of the City of Los Angeles must, before entering upon the duties of his office or position, execute an affidavit stating whether or not he is or ever was a member of the Communist Party of the United States of America or of the Communist Political Association, and if he is or was such a member, stating the dates when he became, and the periods during which he was, such a member; provided, however, that no additional affidavit shall be required on account of the transfer, demotion or promotion of any person who has once executed an affidavit under this section or under Section 4 hereof.

"Sec. 4. Every person who now holds or occupies an office or position in the service of the City of Los Angeles, must, within thirty (30) days after the effective date of this ordinance, or if he be on leave or under suspension for cause from the service of the city at such effective date, within thirty (30) days after his return to such service, execute an affidavit stating the facts required to be stated in the affidavit required by Section 3 of this ordinance."

Seventeen employees of the city refused to comply with the ordinance, and were discharged. They filed in the Superior Court their consolidated petitions for writ of mandate directing reinstatement and payment of salaries [fol. 167] from the date of their discharge. The court denied the petition, and petitioners appeal to this Court.

The issues involved in this case have been set forth and disposed of in Steiner v. Darby, 88 Cal. App. 2d 481, 1948. (Hearing denied by the Supreme Court, Jan. 10, 1949.)

No good purpose would be served in repeating the reasoning so clearly and logically stated by Mr. Justice McComb in the Steiner case. In that case the law as developed to its date of decision is stated and applied.

Since then, so far as brought to our attention, the principles here involved have been before the courts in the following cases:

Lawson v. United States, 176 F. 2d 49.

In that case the United States Court of Appeals for the District of Columbia Circuit held that questions by a Congressional Committee to script writers for motion pictures whether they were or were not communists were pertinent and proper; therefore contumacious witnesses were not protected by the Bill of Rights from answering.

L'Hommedieu *et al.* v. Board of Regents of the University of the State of New York, 95 N. Y. S. (2d) 443.

In that case the Supreme Court, Appellate Division, Third Department, of the State of New York held that a statute which provides for dismissal from the public school system of members of subversive organizations does not violate due process of law, nor does it infringe upon the freedoms of speech, press, or assembly.

In that case it is said:

"There is no constitutional right to be a teacher any more than there is to be a public official or a member of any of the professions. No one has a constitutional right [fol. 168] to advocate the overthrow of the government by

force and violence. The courts have held time and time again that the freedoms guaranteed by the Constitution are not absolute but must yield to the public welfare. (Page 451.)

* * * * * * *

"The most important qualification of a teacher is loyalty to our government. It necessarily follows that disqualification is advocacy of the overthrow of that government. The statute under review is a law dealing with public employment of teachers in our public schools. To avail oneself of the privilege of teaching certain qualifications must be possessed, certain rights renounced. This is not an unconstitutional classification. (Citing cases.)

"When it comes to loyalty to our government, the affirmation of loyalty, the denial of disloyalty, renunciation of membership in organizations advocating overthrow of our government or subscribing to subversive tenets, all have been upheld as qualifications of public employment or of holding office in organizations availing themselves of statutory privileges. (Citing cases.) (Pages 452-453.)

* * * * * * *

" 'The Constitution,' said the United States Supreme Court in U. S. *ex rel.* Milwaukee Social Democratic Pub. Co. 1. Burleson, 255 U. S. 407, 414, 41 S. Ct. 352, 355, 65 L. Ed. 704, 'was adopted to preserve our government, not to serve as a protecting screen for those who, while claiming its privileges, seek to destroy it.' A contemporary statement of the same principle is found in Barsky v. United States, 83 U. S. App. D. C. 127, 167 F. 2d 241; certiorari denied 334 U. S. 843, 68 S. Ct. 1511, 92 L. Ed. 1767."
[fol. 169] American Communications Asso. v. Douds, 94 L. Ed. Advance Opinions 597.

In that case, decided May 8, 1950, the United States Supreme Court upheld the constitutionality of subsection 9 (h) of the Labor Management Relations Act of June 23, 1947. (29 U. S. C. A. sec. 159(h).) This section denies labor unions the right to present cases to the National Labor Relations Board unless there is on file with the Board "* * * an affidavit executed contemporaneously or within the preceding twelvemonth period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate

or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods."

The following comments by the Court are applicable to the case at bar:

"* * * If accidents of birth and ancestry under some circumstances justify an inference concerning future conduct, it can hardly be doubted that voluntary affiliations and beliefs justify a similar inference when drawn by the legislature on the basis of its investigations. (Page 604.)

"* * * The exercise of particular First Amendment rights may fly in the face of the public interest in * * * Government's obligation to provide an efficient public service * * *. (Page 608.)

* * * * * * *

[fol. 170] "We have previously had occasion to consider other statutes and regulations in which the interests involved were, in large measure, like those now being considered. In United Public Workers v. Mitchell, 330 U. S. 75, 91 L. Ed. 754, 67 S. Ct. 556, *supra*, we upheld a statute which provided that employees of the Federal Government could not participate in partisan political activities, concededly a First Amendment right, if they would retain their positions. The decision was not put upon the ground that government employment is a privilege to be conferred or withheld at will. For it was recognized that Congress may not 'enact a regulation providing that no Republican, Jew or Negro shall be appointed to federal office, or that no federal employee shall attend Mass or take active part in missionary work.' 330 U. S. at 100. But the rational connection between the prohibitions of the statute and its objects, the limited scope of the abridgement of First Amendment rights, and the large public interest in the efficiency of government service, which Congress had found necessitated the statute, led us to the conclusion that the statute may stand consistently with the First Amendment." (Page 612.)

In the present case Petitioners fail to understand that loyalty is indispensably necessary in the employer-employee relationship between the state and its servants. It is

treasonable to advocate the destruction by force of the government for which one works. It is an ever-present threat to government itself to have treasonable persons charged with the conduct of public affairs. Having such people on the payroll results in impairment of governmental service. In times of national stress it would seriously affect the functioning of government. It is, therefore, the duty of those charged with the management of the [fol. 171] business of government to ascertain, require, and insure unconditional, unswerving loyalty of every servant of the people, high or low.

One of the foundation stones of private business is that the employee must be loyal to his employer. Loyalty is implicit in the contract of hiring. No private business can long succeed without the conscientious, undivided support of its employees. The man or woman who denies allegiance to his employment is, and should be, soon separated from it. Nemesis with a club waits for him around the corner. And, so long as the employment continues, every employer has the right at any time to ask his employee to declare his loyalty.

"But," say some of the Petitioners, "we're loyal. We will take the oath to defend and support the Constitution of the United States and of the State of California. What we object to is that we are required, under oath, to express our beliefs; it inquires into our thinking today, our thinking tomorrow."

A paragraph from a letter of one of the Petitioners reads as follows:

"It violates the right of every individual to free political association, singling out the Communist Party and saying, in effect, that no city worker has a right to belong to it. Not that it says so specifically. But every worker who signs the oath and affidavit knows by the mere *juxte* position (*sic*) of the three questions, *Loyalty, Force-and-Violence, Communist Party,* that membership in the latter [fol. 172] is considered evidence of disloyalty and shows the desire to overthrow the government by force and violence 'or other unlawful means.' Actually, according to Supreme Court decision, the Communist Party is a legally constituted party entitled to all the electoral privileges accorded any other legal party. My employer, the City of Los Angeles, has no right to ask me whether or not I belong to the Communist, the Republican, the Demo-

cratic, or the Prohibition Party. My party affiliations, according to the Constitution of the United States, are strictly my own affair."

It is an interesting question whether the legislative power may require disclosure or disavowal of mere beliefs or opinions, without overt acts. The argument may be followed extensively in the dissenting and concurring opinion of Mr. Justice Jackson in American Communications Asso. v. Douds, *supra*.

That question is not present in this case. The ordinance under consideration does not call for beliefs. It provides that one must **over** whether or not he is or ever was a member of the Communist party or the Communist Political Association; that he has not within five years advocated the overthrow of the government by force, violence, or unlawful means; that he is not and has not been a member of any group, society, association, organization, or party which advises or teaches overthrow of the government by such means; and that while he is in the service of the City he will not belong to or become a member of any such [fol. 173] group, or advocate or teach such subversive doctrines.

The right of the people of the State of California have their employees declare their allegiance to the state, that they are not its enemies, and do not advocate or believe in destroying the state by force, violence, or unlawful means, is not trammeled, infringed, or denied by any constitutional provision, by natural justice, or by common sense. The ordinance before this Court, adopted by a subdivision of state government, is well within the legislative power, and a timely and proper exercise thereof.

The order is affirmed.

Drapeau, J.

We concur: White, P. J.; Doran, J.

[fol. 174] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 175] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In Bank

GARNER

v.

BOARD OF PUBLIC WORKS, ETC.

ORDER DENYING HEARING

After Judgment by District Court of Appeal 2nd District, Division 1, No. 17411

Petitioners' application for hearing Denied.

Gibson, C. J., Carter, J., and Traynor, J. voting for a hearing.

Gibson, Chief Justice.

Filed Sept. 13, 1950.

William I. Sullivan, Clerk. By —— —— S. F. Deputy.

I, William I. Sullivan, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of the Court this 17th day of October A. D. 1950.

William I. Sullivan. By Henry C. Crabtree, Deputy Clerk. (Seal.)

[fol. 176] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

Number ——

RAY H. GARNER; ET AL., Petitioners,

vs.

BOARD OF PUBLIC WORNS OF THE CITY OF LOS ANGELES; ET AL., Respondents

STIPULATION RE PRINTING OF THE RECORD

In accordance with the provisions of Rule 38, (8) of this Court, It is hereby stipulated between the attorneys for

the parties in the above entitled action, that the entire record certified to this Court by the Clerk of the District Court of Appeal of the State of California, Second Appellate District, be printed, except the following:

1. Page 22 through page 31.
2. Page 33 through page 55.
3. On page 56, print only first Notice of Removal, Discharge or Suspension to Ray H. Garner.
4. Pages 57 and 58.
5. Page 62 through page 77.
6. Page 79 through page 95.
7. Page 109 through page 113.
8. Page 119, beginning with the words "Summary of Argument" through page 121.
9. Page 122, beginning with the words "In *Steiner v. Darby*", through page 125.
10. Page 126, beginning with the words "Ordinance Number", through page 134.
11. Page 135, beginning with the words "The Ordinance", through page 140.

[fol. 177] 12. Page 141, beginning with the words "The effectiveness of" through page 150.

13. Page 151, beginning with words "Ours is the accusatorial" through page 158.
14. Page 159, beginning with the words "The Charter of the City", through page 163.

Dated November 14, 1950.

Charles J. Katz, Attorney for Petitioners.

——, 19—. Ray L. Chesebro, City Attorney. By Alan G. Campbell, Deputy.

——— ——, Attorney for Respondents.

[fol. 178] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

No. 453

ORDER ALLOWING CERTIORARI—Filed March 5, 1951

The petition herein for a writ of certiorari to the District Court of Appeal of the State of California, Second Appellate District, is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.